

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Kettlersville Post Office
Kettlersville, Ohio

Docket No. A2012-39

ORDER AFFIRMING DETERMINATION

(Issued February 15, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 27, 2011, Eric S. Kaminsky (Petitioner Kaminsky) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Kettlersville, Ohio post office (Kettlersville post office).² An additional petition for review was received from Linda R. Miller (Petitioner Miller).³ The Final Determination to close the Kettlersville post office is affirmed.⁴

II. PROCEDURAL HISTORY

On November 3, 2011, the Commission established Docket No. A2012-39 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵ On November 14, 2011, the Postal Service filed the Administrative Record with the Commission.⁶ On December 16, 2011, the Postal Service supplemented the Administrative Record.⁷

² Petition for Review received from Eric S. Kaminsky regarding the Kettlersville, Ohio Post Office 45336, October 27, 2011 (Kaminsky Petition).

³ Letter received from Linda R. Miller regarding the Kettlersville, Ohio Post Office, November 3, 2011 (Miller Petition).

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 945, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 3, 2011; see Notice of Errata, November 8, 2011; Notice of Errata, November 14, 2011.

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 14, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Kettlersville Post Office and Extend Service by Rural Route Service (Final Determination).

⁷ United States Postal Service Notice of Filing Supplement to the Administrative Record, December 16, 2011 (Supplement).

Petitioner Kaminsky filed a Participant Statement supporting his petition.⁸ The Postal Service filed comments requesting that the Commission affirm its Final Determination.⁹ Petitioner also filed comments in response to the Postal Service's comments.¹⁰

III. BACKGROUND

The Kettlersville post office provides retail postal services and service to 69 post office box or general delivery customers. Final Determination at 2. No delivery customers are served through this office. The Kettlersville post office, an EAS-11 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 12:30 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday. Lobby access hours are 24 hours Monday through Saturday. *Id.*

The postmaster position became vacant on July 31, 2009 when the Kettlersville postmaster retired. *Id.* A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 2, 9. Retail transactions average 27 transactions daily (24 minutes of retail workload). *Id.* at 2. Office receipts for the last 3 years were \$32,026 in FY 2008; \$28,215 in FY 2009; and \$32,205 in FY 2010. There is one permit or postage meter customer.¹¹ *Id.* By closing this office, the Postal Service anticipates savings of \$40,645 annually. *Id.* at 9.

After the closure, retail services will be provided by the Anna post office located approximately 8 miles away.¹² Delivery service will be provided by rural route service

⁸ Participant Statement received from Eric S. Kaminsky, December 2, 2011 (Participant Statement).

⁹ United States Postal Service Comments Regarding Appeal, December 21, 2011 (Postal Service Comments).

¹⁰ Comments of Eric S. Kaminsky in Response to the Postal Service Comments (Dated December 21, 2011), January 6, 2011 (Reply Brief).

¹¹ The Administrative Record does not clearly state whether there are any permit or postage meeting customers. *Compare* Final Determination at 2 *with* Administrative Record, Item No. 15.

¹² *Id.* at 2. MapQuest estimates the driving distance between the Kettlersville and Anna post offices to be approximately 7.81 miles (11 minutes driving time).

through the Anna post office. The Anna post office is an EAS-16 level office, with retail service from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 11:30 a.m. on Saturday. Lobby access hours are 24 hours Monday through Saturday. Administrative Record at 34. There are 254 post office boxes are available. Final Determination at 2.

Retail services will also be available at the Botkins post office, located approximately 6 miles away.¹³ The Botkins post office is an EAS-15 level office, with retail service from 8:00 a.m. to 12:30 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. *Id.* Lobby access hours are 24 hours Monday through Saturday. Administrative Record, Item No. 18. There are 62 post office boxes are available. Final Determination at 2. The Postal Service will continue to use the Kettlersville name and ZIP Code. *Id.* at 7, Concern No. 35.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Kettlersville post office. Petitioner Miller argues that the closure will adversely affect the Kettlersville community. Miller Petition. Petitioner Kaminsky raises similar concerns about the effect on the community. He also argues that the Postal Service's economic savings were incorrectly calculated and Kettlersville residents cannot install mailboxes for rural route carriers. He contends that the Postal Service is closing the Kettlersville post office solely for economic reasons. Kaminsky Petition at 1-2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Kettlersville post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact upon the Kettlersville community; and (3) the calculation of economic savings expected to result from discontinuing the Kettlersville Post Office. *Id.*

¹³ *Id.* MapQuest estimates the driving distance between the Kettlersville and Botkins post offices to be approximately 6.2 miles (9 minutes driving time).

at 2. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Kettlersville post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Kettlersville post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload;
- low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- very little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Kettlersville community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, effect on the Kettlersville community, economic savings, and effect on postal employees. *Id.* at 5-14.

Reply brief. Petitioner Kaminsky filed his reply brief reiterating his opposition to the closure. He asserts that the Postal Service could fill the postmaster position instead of closing the post office. Reply Brief at 1. He also argues that the closing would impact the community more than the Postal Service contends. He repeats his contention that street delivery would be impossible because sidewalks in front of their homes prevent residents from placing mailboxes at the curb. He also believes that any new service will make mail delivery less secure. Finally, he argues that revenues are flat and not decreasing. *Id.* at 1-2.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On June 16, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Kettlersville post office. Final Determination at 2. A total of 107 questionnaires were distributed to delivery customers. *Id.* Other questionnaires were made available at the retail counter. *Id.* A total of 27 questionnaires were returned. On June 30, 2011, the Postal Service

held a community meeting at the Kettlersville Fire Department to address customer concerns. Twenty-seven (27) customers attended. *Id.*

The Postal Service posted the proposal to close the Kettlersville post office with an invitation for comments at the Kettlersville, Anna, and Botkins post offices from July 22, 2011 through September 22, 2011. Final Determination at 2. The Final Determination was posted at the same three post offices from October 14, 2011 through November 15, 2011. Administrative Record, Item No. 50; see Supplement at 6-8.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Kettlersville, Ohio is an incorporated community located in Shelby County, Ohio. Administrative Record, Item No. 16. The community is administered politically by the Kettlersville Village Council. *Id.* Police protection is provided by the Sidney County Sheriff. Fire protection is provided by Van Buren Township Fire Department. The community is comprised of retirees, the self-employed, and commuters. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Kettlersville community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Kettlersville post office, customers raised concerns regarding the effect of the

closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 7-9.

Petitioner Kaminsky contends that closing the Kettlersville post office will adversely affect the Kettlersville community. Kaminsky Petition at 1. He contends that the post office is a vital community resource in the small rural community. *Id.* Petitioner Miller contends that the post office building is a community asset and Kettlersville is a growing community. Miller Petition.

The Postal Service responds that this issue was extensively considered, as reflected in the record. Postal Comments at 9. The Postal Service explained that a community's identity derives from the interest and vitality of its residents and their use of its name. *Id.* at 10. The Postal Service will continue to use of the Kettlersville name and ZIP Code in addresses. *Id.* The Postal Service considered citizens meeting at the post office and noted that residents may continue to meet informally, socialize, and share information at the other businesses, churches and residences in town. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the postmaster retired on July 31, 2009 and that an OIC has operated the Kettlersville post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC may be reassigned and no other Postal Service employee will be adversely affected. Postal Service Comments at 14.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Kettlersville post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Kettlersville customers. Postal Service Comments at 5-9. It asserts that customers of the closed Kettlersville post office may obtain retail services at the Anna post office located approximately 8 miles away. Final Determination at 2. Delivery service will be provided by rural route

service through the Anna post office. The Kettlersville post office box customers may obtain Post Office Box Service at the Anna post office, which has 254 boxes available. *Id.* Retail services and 62 post office boxes will also be available at the Botkins post office located 6 miles away. *Id.*

For customers choosing not to travel to the Anna post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 8. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 6.

Petitioner Kaminsky contends that the Kettlersville community is not suitable for mailbox delivery. Kaminsky Petition at 1; Reply Brief at 1. The Postal Service responds that nothing in the record indicates that the Kettlersville community is unsuitable for mailbox delivery. Postal Service Comments at 7. It notes that the post office discontinuance coordinator advises that the Kettlersville community is suitable for mailbox delivery. *Id.* at 7 n.25.

Petitioner Kaminsky was also concerned about mail security once the Kettlersville post office is closed. Reply Brief at 2. The Postal Service responds that customers may place a lock on their mailboxes. The Postal Service also notes that it queried law enforcement about security risks concerning mail theft and vandalism. It asserts that Postal Inspection Service records indicate that there has been no report of mail theft or vandalism in the area. Postal Service Comments at 7-8.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$40,645. Final Determination at 9. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$2,400) minus the cost of replacement service (\$6,034). *Id.*

Petitioner Kaminsky states that the numbers used for the salary and benefits of the Kettlersville postmaster are incorrect. Kaminsky Petition at 1. The Commission has previously observed that the Postal Service should include in its estimate of savings

those costs likely to be eliminated by the closing. The Kettlersville post office postmaster retired on July 31, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be transferred or separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. Postal Service Comments at 12. Furthermore, notwithstanding that the Kettlersville post office has been staffed by an OIC for approximately 2.5 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioner alleges that the Postal Service is closing the Kettlersville post office solely for economic reasons. Kaminsky Petition at 2.

The Commission does recognize that economics may play a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Kettlersville post office (revenues flat and averaging only 27 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2-10.

The Postal Service did not violate the prohibition in section 101(b) on closing the Kettlersville post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Kettlersville post office is affirmed.¹⁴

It is ordered:

The Postal Service's determination to close the Kettlersville, Ohio post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹⁴ See footnote 4, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Kettlersville post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on July 31, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

The Administrative Record describes revenue that is slightly higher in 2010 as compared with 2008, which indicates ongoing support by this community of the Postal Service. This revenue increase supports the Petitioner's argument that the Postal Service did not adequately consider the impact on the community, and contradicts the Postal Service's list of reasons to consider closing the post office which includes a statement that there is low revenue and a declining workload. Interest in the use of the mail in a community and the potential for growth should be considered as part of both the potential economic savings and the impact on the community. Therefore, the Postal Service also did not adequately consider the impact of the closure on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

This appears to be an example of the Postal Service's deciding to close a post office because there is no permanent postmaster and not for sound, strategic business reasons. The Commission has just issued its Advisory Opinion in Docket No. N2011-1, pointing to the fact that the Postal Service's post office closing plans do not optimize the network. In the case of Kettlersville, the failure to undertake actual retail network optimization is exhibited by the Postal Service selecting for closure a post office with strong revenue.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Kettlersville, Ohio and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since July 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

In addition, office receipts for the last 3 years for the Kettlersville post office have been relatively stable and in fact, in FY 2010, the Kettlersville post office realized a 14.1 percent increase in revenues over FY 2009. Although the Postal Service determines how it will allocate its resources across its network, I believe a retail postal facility that has been relatively stable and that is experiencing an increase in revenues could be an important asset.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Kettlersville post office and should be remanded.

Nanci E. Langley